

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK**

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DONALD G. GREEN,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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92-CR-159A  
**DECISION AND ORDER**

Petitioner Donald Green has moved for reconsideration of the Court's recent order (Docket No. 1333) which (1) construed Petitioner's Rule 60(b) motion as a second-or-successive § 2255 petition, and (2) transferred the converted Rule 60(b) motion, as well as Petitioner's third petition to vacate or reduce his sentence, to the Second Circuit. As the Court noted in the order Petitioner now challenges, "the Court is unable to consider the merits of either Petitioner's Rule 60(b) motion or his new § 2255 petition unless and until the Second Circuit, on Petitioner's motion, issues 'an order authorizing [this] court to' do so." *Id.* at 1 (quoting 28 U.S.C. § 2244(b)(3)(A)).

"[A] habeas petitioner who contends that a transfer order was erroneous because he believes his petition or motion is not second or successive may challenge the transfer by moving to retransfer the matter to the district court." *Marmolejos v. United States*, 789 F.3d 66, 69 (2d Cir. 2015). Petitioner's converted Rule 60(b) motion, as well as his third § 2255 petition, are both pending before the Second Circuit. Thus, to the extent Petitioner believes the Court improperly converted his Rule 60(b) motion to a second or successive habeas petition, he may seek relief before the Second Circuit. Petitioner's motion for reconsideration (Docket No. 1335) is therefore denied.

Petitioner has also filed a motion (Docket No. 1338) seeking “an investigation against” the then-Assistant U.S. Attorney who prosecuted Petitioner, William J. Hochul, Jr. Petitioner asserts that Mr. Hochul “is being investigated by the FBI and U.S. Attorney [for the Southern District of New York] Mr. Preet Bharara.” Petitioner’s motion is frivolous and is therefore denied.

**SO ORDERED.**

Dated: November 2, 2016  
Buffalo, New York

s/Richard J. Arcara  
HONORABLE RICHARD J. ARCARA  
UNITED STATES DISTRICT JUDGE